

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A22-0689**

Michael P. Larson,  
Relator,

vs.

Minnesota State College Southeast - Winona,  
Respondent,

Department of Employment and Economic Development,  
Respondent.

**Filed January 17, 2023  
Affirmed  
Segal, Chief Judge**

Department of Employment and Economic Development  
File No. 48223687-3

Michael P. Larson, Trempealeau, Wisconsin (pro se relator)

Keith Ellison, Attorney General, St. Paul, Minnesota (for respondent Minnesota State College Southeast – Winona)

Keri Phillips, Lossom Allen, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent department)

Considered and decided by Bryan, Presiding Judge; Segal, Chief Judge; and Cleary,  
Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## **NONPRECEDENTIAL OPINION**

**SEGAL**, Chief Judge

Relator challenges the decision of an unemployment-law judge (ULJ) that relator is ineligible to receive unemployment benefits because his refusal to abide by his employer's COVID-19 vaccination and testing policy constituted disqualifying employment misconduct. We affirm.

### **FACTS**

Relator Michael Larson was an English instructor for respondent Minnesota State College Southeast-Winona (MSCS). For the fall 2021 semester, Larson was contracted to teach five courses. Four of the courses were fully online and one was a hybrid course that included a weekly in-person class session.

In August 2021, Minnesota Management and Budget (MMB) issued HR/LR Policy #1446 COVID-19 Proof of Vaccination and Testing (COVID-19 policy), which applied to certain state employees, including employees of MSCS. Under the policy, staff assigned to work in-person were required to provide proof of a COVID-19 vaccination or to test weekly for COVID-19 infection. Because Larson was scheduled to teach a weekly in-person class, he was subject to the policy.

At the beginning of the semester, Larson sent a document to MSCS human-resources staff entitled "Statement Establishing Religious Conviction with Regard to Certain Covid Mandates." Larson provided the letter to notify MSCS of his claim "to a religious exemption from mask wearing, Covid testing, and mRNA [vaccine] injections." The statement excerpted a 1952 address by Pope Pius XII to the First International

Congress on the Histopathology of the Nervous System, the crux of which Larson summarized as being “that no one—not the scientist, not the medical doctor, not the public authority—has any moral rights over the individual’s bodily integrity without his consent.”

Larson attached a letter of endorsement from Friar Andrew Dwyer, who wrote that he “fully support[ed] and endorse[d] [Larson’s] claim to religious exemption from mask wearing, Covid testing, and mRNA injections, based on the principles cited by His Holiness Pope Pius XII.” The friar also stated that he “know[s] [Larson] to be a morally upstanding gentleman; and as such, he feels (as do[es] [the friar]) that he must refrain from participating in the experimental procedures that are being demanded of him.”

MSCS did not have a specific process for applying for a religious exemption from the COVID-19 policy but reviewed the requested exemption for reasonableness and determined that Larson’s request was unreasonable. Larson subsequently proposed three accommodations: the first reiterated Larson’s request that he be exempted from the COVID-19 policy based on his religious conviction and continue teaching the course in-person; the second asked that MSCS remove the weekly in-person session and change the course to one that was fully online; and the third suggested that the hybrid course be assigned to a different instructor.

MSCS rejected these proposals as unreasonable, stating that the first proposal of “simply not follow[ing] these policies is not a reasonable accommodation”; the second proposal of moving the course online would not allow Larson to meet an essential function of his job—fulfilling the needs of students who learn better in-person; and the third proposal would “require [MSCS] to pay for additional staff to teach a course [Larson was]

assigned and paid to teach” based on his contract. Human-resources staff reminded Larson that he had the option to test instead of being vaccinated and to wear a face shield while teaching instead of a mask.

Larson refused to comply with the COVID-19 policy and MSCS placed him on no-pay status in September 2021. Based on Larson’s ongoing refusal to vaccinate or test, MSCS sent Larson a letter of reprimand, followed by five-day and ten-day suspensions. MSCS discharged Larson for violating the COVID-19 policy in December 2021.

Larson applied for unemployment benefits. Respondent Minnesota Department of Employment and Economic Development (DEED) issued a determination of ineligibility, citing Larson’s discharge as being due to conduct that qualifies as employment misconduct, and determined that the COVID-19 policy was reasonable.

Larson appealed, and a de novo hearing was held before a ULJ. After hearing testimony from Larson and MSCS staff, the ULJ determined that Larson’s refusal to comply with the COVID-19 policy was not based on a sincerely held religious belief but was instead based on concerns about the efficacy and safety of vaccinations and testing. The ULJ also determined that MSCS’s policy was reasonable and that Larson was therefore ineligible for unemployment benefits because his refusal to comply with the policy constituted employment misconduct.

Larson filed a request for reconsideration and the ULJ affirmed the decision. Larson appeals by writ of certiorari.

## DECISION

Larson challenges the ULJ's benefits-eligibility decision, arguing that he did not commit employment misconduct by refusing to comply with his employer's COVID-19 policy.<sup>1</sup> "Whether an employee committed employment misconduct is a mixed question of fact and law." *Skarhus v. Davanni's Inc.*, 721 N.W.2d 340, 344 (Minn. App. 2006). "[W]hether the act committed by the employee constitutes employment misconduct is a question of law, which we review de novo." *Id.* But we review the ULJ's factual findings in the light most favorable to the decision and defer to the ULJ's credibility determinations. *Id.* "[T]his court will not disturb the ULJ's factual findings when the evidence substantially sustains them." *Peterson v. Nw. Airlines, Inc.*, 753 N.W.2d 771, 774 (Minn. App. 2008), *rev. denied* (Minn. Oct. 1, 2008).

Under Minnesota law, "[e]mployment misconduct means any intentional, negligent, or indifferent conduct, on the job or off the job, that is a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." Minn. Stat. § 268.095, subd. 6(a) (2022). An employee discharged for misconduct is ineligible for unemployment benefits. *Id.*, subd. 4(1) (2022).

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<sup>1</sup> Larson also argues that his discharge was wrongful because it constituted religious discrimination, that the discharge breached his faculty contract, and that the COVID-19 policy was illegal and unreasonable. Of these arguments, we address only Larson's contention that the COVID-19 policy was unreasonable because that is the only other issue properly before us in this appeal of the ULJ's benefits-eligibility determination. *See* Minn. Stat. § 268.105, subd. 7 (2022) (requiring this court to review the ULJ's eligibility decision upon timely writ of certiorari); *Ward v. Delta Airlines*, 973 N.W.2d 649, 653 (Minn. App. 2022) (citing *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), and stating that an issue not presented to the ULJ for consideration is "not appropriately before this court"), *rev. denied* (Minn. June 21, 2022).

“As a general rule, refusing to abide by an employer’s reasonable policies and requests amounts to disqualifying misconduct.” *Schmidgall v. FilmTec Corp.*, 644 N.W.2d 801, 804 (Minn. 2002). An employee who knowingly violates an employer’s instructions and directives commits misconduct because such knowing violation constitutes willful disregard of the employer’s interests. *Id.* at 806; *see also Vargas v. Nw. Area Found.*, 673 N.W.2d 200, 206 (Minn. App. 2004) (stating the general rule that “if the request of the employer is reasonable and does not impose an unreasonable burden on the employee, the employee’s refusal to abide by the request constitutes misconduct”), *rev. denied* (Minn. Mar. 30, 2004).

However, an employee’s conduct based on their sincerely held religious beliefs cannot constitutionally be the basis for a denial of unemployment benefits. *Frazee v. Ill. Dep’t of Emp. Sec.*, 489 U.S. 829, 834 (1989). Larson argues that the ULJ’s decision should be reversed because MSCS’s COVID-19 policy was unreasonable and because Larson’s refusal to comply with the policy was based on a sincerely held religious belief.

**I. The ULJ did not err in finding that MSCS’s COVID-19 policy was reasonable.**

We address first the challenge to the ULJ’s determination that the MSCS COVID-19 policy was reasonable. “What is ‘reasonable’ will vary according to the circumstances of each case.” *Sandstrom v. Douglas Mach. Corp.*, 372 N.W.2d 89, 91 (Minn. App. 1985). The ULJ decided here that MSCS’s COVID-19 policy was reasonable because “it protects and lessens the risk of COVID-19 and transmission and promotes the health and safety of all students, faculty, and staff” and it “allows Larson to choose not to be vaccinated and continue employment.”

Larson argues that the policy is unreasonable, citing studies he asserts demonstrate that neither the COVID-19 vaccine nor testing are effective or safe. However, it is not the role of this court to weigh these studies against the public-health expertise of the Centers for Disease Control and Prevention and the Minnesota Department of Health upon which the COVID-19 policy was based. *See S. Bay United Pentecostal Church v. Newsom*, 141 S. Ct. 716, 716 (2021) (Roberts, C.J., concurring) (stating, in the COVID-19 context, that reviewing courts “owe significant deference to politically accountable officials with the background, competence, and expertise to assess public health” (quotation omitted)); *see also Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905) (deferring to discretion of local public-health authorities in challenge to compulsory vaccination law).

Additionally, the record supports the ULJ’s decision that the policy was reasonable and not unduly burdensome on Larson. The policy offered Larson the option of testing in lieu of being vaccinated. And the testing constituted a minimal burden for Larson—it was free and conducted during business hours at his workplace. The employer also testified that if Larson objected to the nasal swab specifically, he could have obtained a different test at his own cost to fulfill the testing requirement. Larson acknowledged that he did not inquire whether he could use a different testing method.

**II. The ULJ did not err in determining that Larson’s proffered reasons for refusing to comply with the COVID-19 policy were not based on sincerely held religious beliefs.**

Having determined that the policy was reasonable, we turn to Larson’s argument that the ULJ erred in its determination that his objection to complying with the policy was not based on a sincere religious belief. While conduct based on an employee’s sincerely

held religious beliefs is constitutionally protected and cannot be the basis for denial of unemployment benefits, this protection does not apply if the conduct is based on secular views instead of religious beliefs. *Frazee*, 489 U.S. at 833. Whether conduct is based on religious beliefs or secular views is a question of fact. *In re Welfare of T.K.*, 475 N.W.2d 88, 91 (Minn. App. 1991).

The ULJ found that Larson’s objection to being vaccinated was premised on his views about the efficacy and safety of the vaccine based on Larson’s responses to questions at the hearing. For example, the ULJ asked, “So, what is your moral objection to getting any vaccine?” Larson replied, “I don’t know, I guess I would have to . . . take that on a case-by-case basis. And I wouldn’t have a moral objection to getting a vaccine, if I was, as the individual who was receiving it, was fully informed and on board with it.” The ULJ also asked, “[S]o what are the reasons that you don’t want to say yes to the vaccine?” Larson said, “Well . . . that has to do with . . . very much substantial doubt about efficacy and safety regarding the vaccine.”

Moreover, even if Larson’s objections to being vaccinated were based on his religious beliefs, the COVID-19 policy offered Larson a choice between being vaccinated or undergoing weekly testing. And we are persuaded that the ULJ’s credibility determinations concerning Larson’s objections to testing are supported by substantial evidence in the record.



Larson made the following statements during cross-examination about his objections to being tested for COVID-19:

Q: Okay. But if you determined to get the test. You did the research. You determined the test would . . . be safe for you. Getting the test would not violate any Catholic principles or standards or beliefs?

Larson: Right. Exactly. If I did not see it as an unreasonable risk then, then yes, there would be no violation.

Larson further testified:

ULJ: So, why is testing something you object to?

Larson: Well, it falls under the same broad category as the vaccination . . . in my case, an unwanted medical intervention.

ULJ: Okay. So, any kind of testing, whether it a swab or some other manner?

Larson: Well . . . the only kind of testing that I understood to be available was the long swab, deep into the nasal, uh, cavity method of testing, the PCR Diagnostics.

. . . .

ULJ: Well would it have made a difference if they were doing a less deep testing, swabbing, or swabbing your mouth, or?

Larson: It could have . . . . That's certainly better and a more tolerable medical intervention. But I would have to consider that further as well.

When asked whether he had considered saliva tests for COVID-19 as opposed to the nasal swab test, Larson admitted that he never explored that option.

Larson thus had noninvasive alternatives for complying with the COVID-19 policy, which according to his own testimony, would not have interfered with his religious beliefs.

We therefore discern no basis to reverse the ULJ's finding that Larson's refusal to adhere to the COVID-19 policy was based on secular, not religious reasons.

**Affirmed.**